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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

ENEIDA AMPARAN, individually and on
 behalf of all others similarly situated,

Plaintiff,

v.

PLAZA HOME MORTGAGE, INC. and DOES
 1 through 10 inclusive,

Defendants.

CASE NO. C-07-04498 PVT

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

- (1) **Violations of the Truth in Lending Act, 15 U.S.C. §1601, et seq;**
- (2) **Violation of Bus. & Prof. Code §17200, et seq. - "Unlawful" Business Practices (TILA);**
- (3) **Violation of Bus. & Prof. Code §17200, et seq. - "Unfair" and "Fraudulent" Business Practices;**
- (4) **Breach of Contract;**
- (5) **Breach of the Covenant of Good Faith and Fair Dealing; and**
- (6) **Violation of Bus. & Prof. Code §17200, et seq. - "Unlawful" Business Practices (Fin. Code § 22302).**

JURY TRIAL DEMANDED

1 Plaintiff, ENEIDA AMPARAN, individually and on behalf of all others similarly situated
2 alleges as follows:

3
4 **I.**

5 **INTRODUCTION**

6 1. This is an action pursuant to the Truth in Lending Act (“TILA”), 15 U.S.C. §1601, *et*
7 *seq.*, California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200, *et seq.*, and other
8 statutory and common law in effect. Plaintiff ENEIDA AMPARAN, individually, and on behalf of all
9 others similarly situated, brings this action against PLAZA HOME MORTGAGE, INC. and DOES 1-10
10 (collectively “Defendants”), based, in part, on Defendants’ failure to clearly and conspicuously disclose
11 to Plaintiff and the Class Members, in Defendants Option Adjustable Rate Mortgage (“ARM”) loan
12 documents, and in the required disclosure statements, accompanying the loans, (i) the actual interest rate
13 on the note(s) (12 C.F.R. § 226.17); (ii) that payments on the notes at the teaser rate will result in
14 negative amortization and that the principal balance will increase (12 C.F.R. § 226.19); and (iii) that the
15 initial interest rate provided was discounted and does not reflect the actual interest that Plaintiff and
16 Class members would be paying on the Note(s).

17
18 **II.**

19 **THE PARTIES**

20 2. Plaintiff, ENEIDA AMPARAN (“Plaintiff”) is, and at all times relevant to this
21 Complaint, was an individual residing in San Jose, California. On or about January 5, 2006, Plaintiff
22 refinanced her existing home loan and entered into an Option ARM loan agreement with Defendants.
23 The Option ARM loan was secured by Plaintiff’s primary residence. Attached hereto as Exhibit 1 is a
24 true and correct copy of the Note and Truth and Lending Disclosure Form pertinent to this action.

25 3. Defendant PLAZA HOME MORTGAGE, INC. is a California corporation licensed to
26 do, and is doing business in California. At all relevant times hereto, PLAZA HOME MORTGAGE,
27 INC., was and is engaged in the business of promoting, marketing, distributing and selling the Option
28 Arm loans that are the subject of this Complaint. PLAZA HOME MORTGAGE, INC. transacts

1 business in Santa Clara County, California and at all relevant times promoted, marketed, distributed, and
2 sold Option Arm loans throughout the United States, including Santa Clara County, California. PLAZA
3 HOME MORTGAGE, INC. has significant contacts with Santa Clara County, California, and the
4 activities complained of herein occurred, in whole or in part, in Santa Clara County, California.

5 4. At all times mentioned herein, Defendants, and each of them, were engaged in the
6 business of promoting, marketing, distributing, and selling the Option Arm loans that are the subject of
7 this Complaint, throughout the United States, including Santa Clara County, California.

8 5. Plaintiff is informed and believes, and thereon alleges that each and all of the
9 aforementioned Defendants are responsible in some manner, either by act or omission, strict liability,
10 fraud, deceit, fraudulent concealment, negligence, respondeat superior, breach of contract or otherwise,
11 for the occurrences herein alleged, and that Plaintiff's injuries, as herein alleged, were proximately
12 caused by the conduct of Defendants.

13 6. Plaintiff is informed and believes, and thereon alleges, that at all times material hereto
14 and mentioned herein, each of the Defendants (both named and DOE defendants) sued herein were the
15 agent, servant, employer, joint venturer, partner, division, owner, subsidiary, alias, assignee and/or alter-
16 ego of each of the remaining Defendants and were at all times acting within the purpose and scope of
17 such agency, servitude, joint venture, division, ownership, subsidiary, alias, assignment, alter-ego,
18 partnership or employment and with the authority, consent, approval and ratification of each remaining
19 Defendant.

20 7. At all times herein mentioned, each Defendant was the co-conspirator, agent, servant,
21 employee, assignee and/or joint venturer of each of the other Defendants and was acting within the
22 course and scope of said conspiracy, agency, employment, assignment and/or joint venture and with the
23 permission and consent of each of the other Defendants.

24 8. Plaintiff is informed and believes, and thereon alleges, that Defendants, PLAZA HOME
25 MORTGAGE, INC. and DOES 1-10, and each of them, are, and at all material times relevant to this
26 Complaint, performed the acts alleged herein and/or otherwise conducted business in California.
27 Defendants, and each of them, are corporations or other business entities, form unknown, have, and are
28 doing business in this judicial district.

9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10, inclusive, are securitized trusts, equity funds, collateralized debt obligations (CDO), CDO underwriters, CDO trustees, hedge funds or other entities that acted as additional lenders, loan originators and/or are assignees to the loans which are the subject of this action. Plaintiff will seek leave of Court to replace the fictitious names of these entities with their true names when they are discovered by Plaintiff herein.

10. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants DOES 1 through 10, inclusive, and each of them, are unknown to Plaintiff at this time, and Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff alleges, on information and belief, that each Doe defendant is responsible for the actions herein alleged. Plaintiff will seek leave of Court to amend this Complaint when the names of said Doe defendants have been ascertained.

11. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants, and each of them, including without limitation those Defendants herein sued as DOES, were acting in concert or participation with each other, or were joint participants and collaborators in the acts complained of, and were the agents or employees of the others in doing the acts complained of herein, each and all of them acting within the course and scope of said agency and/or employment by the others, each and all of them acting in concert one with the other and all together.

III.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 15 U.S.C § 1601 *et seq.* and 28 U.S.C. § 1331.

13. This Court has personal jurisdiction over the parties in this action by the fact that Defendants are either individuals who reside in this District within California or are corporations duly licenced to do business in California.

14. Venue is proper within this District and Division pursuant to 28 U.S.C. §1391(b) because a substantial part of the events and omissions giving rise to the claims occurred in this district, and because there is personal jurisdiction in this district over the named Defendant because it regularly conducts business in this judicial district.

IV.

FACTS COMMON TO ALL CAUSES OF ACTION

15. PLAZA HOME MORTGAGE, INC. ("PLAZA") sells a variety of home loans which include: conventional fixed rate, conventional ARM, 2nd mortgage fixed, home equity lines of credit, FHA, VA, and non-conforming loans. The ARM or adjustable rate mortgages are the loans that are the subject of this Complaint.

16. The instant action arises out of residential mortgage loan transactions in which Defendants failed to disclose pertinent information in a clear and conspicuous manner to Plaintiff and the Class members, in writing, as required by law.

17. This action also concerns Defendants' unlawful, fraudulent and unfair business acts or practices. Defendants engaged in a campaign of deceptive conduct and concealment aimed at maximizing the number of consumers who would accept this type of loan in order to maximize Defendants' profits, even as Defendants knew their conduct would cause many of these consumers to lose their homes through foreclosure.

18. Plaintiff, along with thousands of other similarly situated consumers, were sold an Option ARM home loan by Defendants. The Option ARM loan sold to Plaintiff and the Class is a deceptively devised financial product. The loan has a variable rate feature with payment caps. The product was sold based on the promise of a low, fixed interest rate, when in fact Plaintiff and the Class were charged a different, much greater interest rate than promised. Further, Defendants disguised from Plaintiff the Class the fact that Defendants' Option ARM loan was designed to, and did, cause negative amortization to occur. Further still, once lured into these loans, consumers cannot easily extricate themselves from these loans. For a substantial number of Defendants' Option ARM loans, Defendants included a stiff and onerous prepayment penalty making it extremely difficult to extricate themselves from the loans.

19. The Option ARM loan Defendants sold to Plaintiff violates the Truth In Lending Act (TILA). TILA is supposed to protect consumers; it mandates certain disclosures be made by lenders to borrowers concerning the terms and conditions of their home loans. Defendants failed to make these disclosures in connection with the Option ARM loan sold to Plaintiff and the Class.

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1 20. At all times relevant, Defendants promoted their Option ARM loan product to
2 consumers, including Plaintiff, in a false or deceptive manner. Defendants promoted to the general
3 public a loan which would provide a very low, fixed interest rate for a period of three (3) to five (5)
4 years and no negative amortization. Defendants used this “teaser” rate to lure Plaintiff into purchasing
5 Defendants’ Option ARM loan product. However, the low fixed rate was illusory, a false promise.
6 Plaintiff and others similarly situated did not receive the benefit of the low rate promised to them. Once
7 signed on to Defendants’ loan, the interest rate applied to Plaintiff’s and Class members’ loans was
8 immediately and significantly increased.

9 21. Plaintiff and others similarly situated were consumers who applied for a mortgage loan
10 through Defendants. During the loan application process, in each case, Defendants promoted,
11 advertised, and informed Plaintiff and the Class members that in accepting these loan terms, Plaintiff
12 would be able to lower their mortgage payment and save money. Defendants initiated this scheme in
13 order to maximize the amount of the loans issued to consumers and to maximize Defendants’ profits.

14 22. Based on the Defendants’ representations, and the conduct alleged herein, Plaintiff and
15 Class members agreed to finance their primary residence through Defendants’ Option ARM loan.
16 Plaintiff and Class members were told they were being sold a home loan with a low interest rate of
17 between 1% and 3.0% interest rate (the “teaser” rate), and that the interest rate was fixed for the first
18 three (3) to five (5) years of the loan. Defendants also informed Plaintiff, and Plaintiff was lead to
19 believe, that if they made payments based on the promised low interest rate, which were the payments
20 reflected in the written payment schedule provided to them by Defendants, the loan was a no negative
21 amortization home loan. Plaintiff’s payments were to be applied to their principal loan balances as well
22 as to interest.

23 23. After, the purported three (3) - five (5) year fixed interest period, Plaintiff and the Class
24 members reasonably believed, based on the representations contained in the documents Defendant
25 provided to Plaintiff and the Class members, that they would be able to refinance their loan and get a
26 new loan before their scheduled payments increased. However, the payment schedule provided by
27 Defendants failed to disclose and by omission failed to inform these consumers that due to the negative
28 amortization that was purposefully built into these loans, Plaintiff and the Class members would be

1 unable to refinance their homes as there would be little or no equity left to refinance.

2 24. Plaintiff believed these facts to be true because that is what the Defendants wanted
3 consumers to believe. Defendants aggressively marketed their product as a fixed, low interest home
4 loan. Defendants knew that if marketed in such a manner, their Option ARM loan product would be a
5 hugely popular and profitable product for them. Defendants also knew, however, that they were
6 marketing their product in a false and deceptive manner. While Defendants trumpeted their low, fixed
7 rate loans to the public, Defendants knew their promise of low, fixed interest was illusory.

8 25. In fact, Defendants' Option ARM loan possessed a low, fixed **payment** but not a low,
9 fixed interest rate. Unbeknownst to Plaintiff and Class members, the actual interest rate they were
10 charged on their loans was not fixed, was not the low teaser interest rate stated in the loan
11 documentation and was in fact considerably higher than going market rates. And, after purchasing
12 Defendants' Option ARM loan product, Plaintiff and Class members did not actually receive the benefit
13 of the low, teaser rate at all in some cases, or at best, received that rate for only a single month.
14 Immediately, thereafter, Defendants in every instance and for every loan, increased the interest rate they
15 charged consumers. The now-increased interest charges incurred by Plaintiff and Class members over
16 and above the fixed interest payment rate were added to the principal balance on their home loans in
17 ever increasing increments, substantially reducing the equity in these borrowers' homes.

18 26. In stark contrast to this reality, Defendants, through the standardized loan contracts they
19 created and supplied to Plaintiff and the Class, Defendants stated that negative amortization was only a
20 possibility and would occur only if the payments were not sufficient. Defendants concealed and failed
21 to disclose the fact that the loan as presented and designed, in fact, *guaranteed* negative amortization.
22 Defendants failed to disclose and omitted the objectively material fact that negative amortization would
23 occur if the consumer followed the payment schedule set forth by Defendants in the loan documents.
24 This information was objectively material and necessary for consumers to make an informed decision
25 because this would have revealed that the loan's principal balance would increase if the payment
26 schedule was followed, thereby rendering it impossible to refinance the loan at or around the time the
27 prepayment penalty expired and/or by the time the interest and payment rates re-set. In this respect,
28 Defendants utterly failed to place any warning on the Truth and Lending Disclosure Form about

1 negative amortization.

2 27. At all times relevant, once Plaintiff and the Class members accepted Defendants' Option
3 ARM loan contract, they had no viable option by which to extricate themselves because a substantial
4 majority of these Option ARM loan agreements included a draconian pre-payment penalty for a period
5 of up to three years.

6 28. The Option ARM loans sold by Defendants all have the following uniform
7 characteristics:

- 8 (a) There is an initial low interest rate or "teaser" rate that was used to entice the
9 Plaintiff into entering into the loan. The rate offered was typically 1%-3%;
- 10 (b) The loan has with it a corresponding low payment schedule. The marketing of the
11 loan with the above teaser was intended to misleadingly portray to consumers that
12 the low payments for the first three (3) to five (5) years were a direct result of the
13 low interest rate being offered;
- 14 (c) The initial payments in the required disclosures were equal to the low interest rate
15 being offered. The purpose was to assure that if someone were to calculate what
16 the payment would be at the low offered interest rate, it corresponded to the
17 payment schedule. This portrayal was intended to further mislead consumers into
18 believing that the payments were enough to cover all principal and interest;
- 19 (d) The payment has a capped annual increase on the payment amount; and
- 20 (e) And for a substantial number of the loans, the loans included a prepayment
21 penalty preventing consumers from securing a new loan for a period of up to three
22 (3) years.

23 29. Defendants uniformly failed to disclose and by omission failed inform consumers,
24 including Plaintiff and the Class members, in a clear and conspicuous manner that the fixed "teaser" rate
25 offered by Defendants was actually never applied to their loans, or, at best, was only applied for thirty
26 (30) days. Thereafter, the true interest charged on the loans was significantly higher than the promised,
27 advertised rate.

28 ///

1 30. Defendants uniformly failed to disclose and by omission failed to inform consumers,
2 including Plaintiff and the Class members, that the payments set forth in Defendants' schedule of
3 payments were insufficient to cover the actual charges and that this was, in fact, a loan that would cause
4 the Plaintiff's and the Class members to lose the equity they have in their home.

5 31. Defendants uniformly failed to disclose and by omission failed to inform consumers,
6 including Plaintiff and the Class members, that when the principal balance increased to a certain level,
7 they would no longer have the option of making the fixed interest payment amount.

8 32. Disclosing whether a payment will result in negative amortization is of critical
9 importance to consumers. If the disclosed payment rate is insufficient to pay both principle and interest,
10 one of the consequences of negative amortization is a loss of equity. Defendants are and at all times
11 relevant hereto have been aware that clear and conspicuous disclosure of the actual interest rate and a
12 payment rate sufficient to avoid negative amortization and the concomitant loss of equity is extremely
13 important material information.

14 33. At all times relevant, Defendants, and each of them, knew or should have known, or were
15 reckless in not knowing, that: (i) the payment rate provided to Plaintiff and the Class members was
16 insufficient to pay both interest and principle; (ii) that negative amortization was substantially certain to
17 occur if Plaintiff and the Class members made payments according to the payment schedule provided by
18 Defendants; and (iii) that loss of equity and/or loss of Plaintiff's and the Class members residence was
19 substantially certain to occur if Plaintiff and the Class members made payments according to the
20 payment schedule provided by Defendants.

21 34. In spite of its knowledge, Defendants marketed its ARM loans as product that would
22 provide Plaintiff and the Class members with a low interest rate for the first three (3) to five (5) years of
23 the loan, and at all times relevant, failed to disclose and/or concealed by making partial representations
24 of material facts when Defendants had exclusive knowledge of material facts that negative amortization
25 was certain to occur. This concealed and omitted information was not known to Plaintiff and the Class
26 members and which, at all times relevant, Defendants failed to disclose and/or actively concealed by
27 making such statements and partial, misleading representations to Plaintiff and all others similarly
28 situated. Because the ARM loans did not provide a low interest rate for the first three (3) to five (5)

1 years of the Note and the payment rate disclosed by Defendants was insufficient to pay both principle
2 and interest, negative amortization occurred.

3 35. The true facts about Defendants' ARM loans is that they do not provide the low interest
4 rate promised, and are certain to result in negative amortization.

5 36. Disclosure of a payment rate that is sufficient to pay both principle and interest on the
6 loans is of critical importance consumers. If the disclosed payment rate is insufficient to pay both
7 principle and interest, one of the consequences is that negative amortization or loss of equity will occur.
8 Defendants are and at all times relevant hereto have been aware that the ability of the disclosed payment
9 rate to pay both principle and interest so as to avoid negative amortization is one of the most important
10 terms of a loan.

11 37. To this day, Defendants continue to conceal material information from consumers, and
12 the public, that: (i) the payment rate provided to Plaintiff and the Class members is and was insufficient
13 to pay both principle and interest; (ii) if the disclosed payment schedule is followed, Plaintiff and the
14 Class members will suffer negative amortization; and (ii) loss of equity and/or possession of the
15 property is substantially certain to occur if the disclosed payment schedule is followed. Nevertheless,
16 Defendants have refused to clearly and conspicuously disclose to Plaintiff and the Class members the
17 existence of this important material information and the injury caused thereby, including but not limited
18 to the loss of equity.

19 38. In the end, the harm caused by Defendants failures to disclose and omissions grossly
20 outweighs any benefit that could be attributed to them.

21 39. Knowing the truth and motivated by profit and market share, Defendants have knowingly
22 and willfully engaged in the acts and/or omissions to mislead and/or deceive Plaintiff and others
23 similarly situated.

24 40. The ARM loans have resulted and will continue to result in significant loss and damage
25 to the Class Members, including but not limited to the loss of equity these consumers have or had in
26 their homes.

27 41. The facts which Defendants misrepresented and concealed, as alleged in the preceding
28 paragraphs, were material to the decisions about whether to purchase the ARM loans in that Plaintiff

1 and others similarly situated would not have purchased these loans but for Defendants' unlawful, unfair,
2 fraudulent and/or deceptive acts and/or practices as alleged herein.

3 42. Defendants engaged in the unlawful, unfair, fraudulent, untrue and/or deceptive
4 marketing scheme to induce consumers to purchase their ARM loans.

5 43. Defendants unlawful, unfair, fraudulent, untrue and/or deceptive acts and/or practices
6 were committed with willful and wanton disregard for whether or not Plaintiff or others similarly
7 situated would, in fact, receive a home loan that would actually provide the low interest and payment
8 rate, as promised, for the first three (3) to five (5) years of the loan that is sufficient to pay both principle
9 and interest.

10 44. Upon information and belief and at all times relevant, Defendants possessed full
11 knowledge and information concerning the above facts about the ARM loans, and otherwise marketed
12 and sold these ARM loans throughout the United States, including the State of California.

14 V.

15 CLASS ACTION ALLEGATIONS

16 45. Plaintiff brings this action on behalf of herself, and on behalf of all others similarly
17 situated (the "Class") pursuant to Federal Rule of Civil Procedure, Rules 23(a), and 23(b), and the case
18 law thereunder. The classes Plaintiff seeks to represent are defined as follows:

19
20 **The California Class:** All individuals who, within the four year period
21 preceding the filing of Plaintiff's Complaint through the date notice is
22 mailed to the Class, received an Option ARM loan through Defendants on
their primary residence located in the State of California. Excluded from
the California Class are Defendants' employees, officers, directors, agents,
representatives, and their family members; and

23 **The National Class:** All individuals in the United States of America who,
24 within the four year period preceding the filing of Plaintiff's complaint
25 through the date notice is mailed to the Class, received an Option ARM
26 loan through Defendants on their primary residence located in the United
States of America. Excluded from the National Class are Defendants'
employees, officers, directors, agents, representatives, and their family
members.

27 An appropriate sub-Class exists for the following Class Members:

28 All individuals in the United States of America who, within the three year

1 period preceding the filing of Plaintiff's complaint through the date notice
2 is mailed to the Class, received an Option ARM loan through Defendants
3 on their primary residence located in the United States of America.
Excluded from the National sub-Class are Defendants' employees,
officers, directors, agents, representatives, and their family members.

4 Plaintiff reserves the right to amend or otherwise alter the Class definitions presented to the
5 Court at the appropriate time, or propose or eliminate sub-Classes, in response to facts learned through
6 discovery, legal arguments advanced by Defendants or otherwise.

7 46. Numerosity: The Class is so numerous that the individual joinder of all members is
8 impracticable under the circumstances of this case. While the exact number of Class members is
9 unknown at this time, Plaintiff is informed and believes that the entire Class or Classes consist of
10 approximately tens of thousands of members.

11 47. Commonality: Common questions of law or fact are shared by the Class members. This
12 action is suitable for class treatment because these common questions of fact and law predominate over
13 any individual issues. Such common questions include, but are not limited to, the following:

- 14 (1) Whether Defendants' acts and practices violate the Truth in Lending Act;
- 15 (2) Whether Defendants' conduct violated 12 C.F.R. § 226.17;
- 16 (3) Whether Defendants' conduct violated 12 C.F.R. § 226.19;
- 17 (4) Whether Defendants engaged in unfair business practices aimed at deceiving
18 Plaintiff and the Class members before and during the loan application process;
- 19 (5) Whether Defendants, by and through their officers, employees, and agents failed
20 to disclose that the interest rate actually charged on these loans was higher than
21 the rate represented and promised to Plaintiff and the Class members;
- 22 (6) Whether Defendants, by and through their officers, employees and agents
23 concealed, omitted and/or otherwise failed to disclose information they were
24 mandated to disclose under TILA;
- 25 (7) Whether Defendants failed to disclose the true variable nature of interest rates on
26 adjustable rate mortgage loans and adjustable rate home equity loans;
- 27 (8) Whether Defendants failed to properly disclose the process by which negative
28

amortization occurs, ultimately resulting in the recasting of the payment structure over the remaining lifetime of the loans;

(9) Whether Defendants' failure to apply Plaintiff's and the Class members' payments to principal as promised in the form Notes constitutes a breach of contract, including a breach of the covenant of good faith and fair dealing;

(10) Whether Defendants' conduct in immediately raising the interest rate on consumers' loans so that no payments were made to the principal balance constitutes breach of the covenant of good faith and fair dealing;

(11) Whether Defendants' marketing plan and scheme misleadingly portrayed or implied that these loans were fixed rate loans, when Defendants knew that only the periodic payments were fixed (for a time) but that interest rates were not, in fact, "fixed;"

(12) Whether the terms and conditions of Defendants' Option ARM home loan are unconscionable;

(13) Whether Plaintiff and the Class are entitled to damages;

(14) Whether Plaintiff and the Class members are entitled to punitive damages; and

(15) Whether Plaintiff and the Class members are entitled to rescission.

48. Typicality: Plaintiff's claims are typical of the claims of the Class members. Plaintiff and the other Class members were subjected to the same kind of unlawful conduct and the claims of Plaintiff and the other Class members are based on the same legal theories.

49. Adequacy: Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the other members of the Class Plaintiff seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff intends on prosecuting this action vigorously. The interests of members of the Class will be fairly and adequately protected by Plaintiff and her counsel.

50. Ascertainable Class: The proposed Classes are ascertainable in that the members can be identified and located using information contained in Defendants' mortgage lending records.

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51. This case is brought and can be maintained as a class action under Rule 23(b)(1), 23(b)(2), and 23(b)(3):

- (a) Risk of Inconsistent Judgments: The unlawful acts and practices of Defendants, as alleged herein, constitute a course of conduct common to Plaintiff and each Class member. Prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants and/or substantially impair or impede the ability of individual Class members to protect their interests;
- (b) Injunctive and/or Declaratory Relief to the Class is Appropriate: Defendants, and each of them, have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief or corresponding declaratory relief with respect to the Class as a whole appropriate; and
- (c) Predominant Questions of Law or Fact: Questions of law or fact common to the Class members, including those identified above, predominate over questions affecting only individual Class members (if any), and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Class action treatment will allow a large number of similarly situated consumers to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. Further, an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudicating each such individual lawsuit would be substantial.

VI.

FIRST CAUSE OF ACTION

(Violations of Truth in Lending Laws, 15 U.S.C. §1601, *et seq.*,

(Against All Defendants)

52. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

53. 15 U.S.C.A. §1601, *et seq.*, is the Federal Truth in Lending Act (“TILA”). The Federal Reserve Board of Governors implements the Federal Truth in Lending Act through Regulation Z (12 C.F.R. §226) and its Official Staff Commentary. Compliance by lenders with Regulation Z became mandatory October 1, 1982. Likewise, Official Staff Commentary issued by the Federal Reserve Board is also binding on all lenders.

54. The purpose of TILA is to protect consumers. This is stated in 12 C.F.R. § 226.1, which reads:

§226.1 Authority, purpose, coverage, organization, enforcement and liability. . .

(b) Purpose. The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and costs.

The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer’s principal dwelling . . .

55. Reg. Z also mandates very specific disclosure requirements regarding home loans with which lenders, including Defendants, must comply:

§ 226.17. General disclosure requirements.

(a) Form of disclosures. (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under § 226.18.

56. The purpose of the TILA is to assure a meaningful disclosure of credit terms so that the borrowers will be able to compare more readily the various credit terms available to them and avoid the uninformed use of credit and to protect the consumer against inaccurate and unfair credit billing practices.

57. Defendants’ Option ARM loan violates TILA because Defendants failed to comply with the disclosure requirements mandated by Regulation Z and Official Staff Commentary issued by the

1 Federal Reserve Board. Defendants failed in a number of ways to clearly, conspicuously and/or
2 accurately disclose the terms of the Option ARM loan to Plaintiff as Defendants were required to do
3 under TILA. These violations are apparent on the face of the TILA Disclosure Forms.

4 58. The TILA violations committed by Defendants are more specifically detailed as follows:

5
6 **A. Defendants' Failure to Clearly and Conspicuously Disclose The Actual Interest Rate**
7 **Violates Truth in Lending Laws**

8 59. 12 C.F.R. § 226.17 and 12 C.F.R. § 226.19 require the lender to make disclosures
9 concerning the interest rate in a clear and conspicuous manner. Further, a misleading disclosure is as
10 much a violation of TILA as a failure to disclose at all. Defendants failed to meet the disclosure
11 mandates required of them concerning the interest rate Defendants actually applied to Plaintiff's and
12 Class members' loans, as well as the interest actually charged to Plaintiff and the Class members.

13 60. Defendants' disclosure in the Promissory Note concerning the interest rate is, at best,
14 unclear and inconspicuous. At worst, it is intentionally deceptive. In either instance, it is certainly
15 different than the interest rate set forth by Defendants in the TILA Disclosure Form. The interest rate
16 information set forth by Defendants in the Note conflicts with the interest rate information set forth by
17 Defendants in the TILA Disclosure Form.

18 61. The interest rate set forth in the Note is the teaser rate that Defendants, in fact, apply to
19 the loan for a single month. However, Defendants do not make clear in the Note or anywhere else that
20 this low promised rate (the same rate upon which Defendants base the written payment schedule
21 provided to Plaintiff) is only offered for the first thirty (30) days of the loan. Defendants employ the
22 most convoluted, confusing and circuitous methodology in describing the interest rate. In one part of
23 the Note, Defendants state that the promised low interest rate is the rate until the "change date." A
24 description of the change date is found in another part of the Note. The convoluted and disjointed
25 method employed by which Defendants provide this information makes it extremely difficult, if not
26 impossible for anyone to determine that, in fact, that the change date corresponds to the very first
27 monthly payment Plaintiff and the Class members made on their loans.

28 ///

62. The convoluted language used by Defendants to disclose the interest rate on Plaintiff's and the Class members loans is not clear and conspicuous. Rather, the disclosures used by Defendants were purposefully unclear and meant to mislead and confuse Plaintiff and the Class members. In particular, it is virtually impossible to discern when Plaintiff and the Class members would receive the low interest rate they were promised, if, in fact, it can be determined at all. And, the truth is that Plaintiff and the Class members *never* received the low interest rate, or in some cases received it for only thirty days. Defendants promise of a low interest rate is and was wholly illusory and the deception, as alleged herein, was uniformly practiced on Plaintiff and Class members by Defendants to facilitate sales of their loans to consumers.

63. The Note also sets forth the amount of Plaintiff's and Class members' initial monthly payments. That amount is equal to what the payment would be if the low interest rate promised to Plaintiff by Defendants was true and was being applied to the principal balance on the loans. This is a further deception committed by Defendants, because the real interest rate charged on the loans by Defendants is much higher than the low interest rate promised to Plaintiff and Class members. Thus, the payment amount provided by Defendants was intended to and did deceive consumers into falsely believing they would, in fact, receive the teaser interest rate promised to them.

64. The TILA Disclosure Form is also confusing and deceptive for much the same reason. It shows the scheduled payments for the first three (3) to five (5) years of the loan as being based on the low "teaser" rate Plaintiff and Class members were promised. In truth, however, this payment schedule has no real relation to the interest rate Defendants actually charged Plaintiff and the Class members on their loans.

65. Defendants' failure to clearly, conspicuously and accurately disclose the actual interest rate applied to Plaintiff's and Class members' loans, the Notes expressly state and/or implies that Plaintiff's and the Class members payments will pay off principal and interest on the loan. Based on the payment schedule provided by Defendants in the Note and TILA Disclosure Form, Plaintiff and the Class members were led to believe that they would be paying off both principal and interest on their loans by making payments according to the payment schedule. The contractual language in the Note only makes sense, and can only be true, if the promised low interest rate actually applied to Plaintiff's

1 and the Class members loans was, in fact, the “teaser” rate promised by Defendants. Thus, Plaintiff and
 2 the Class members reasonably believed that the low rate promised to them would be applied to their
 3 loans. However, the true fact is that the payment schedule provided by Defendants did not pay any
 4 principal on the loan at all. The payment schedule provided by Defendants only covered a portion of the
 5 interest Defendants charged Plaintiff and the Class members for these loans.

6 66. Taken separately and in totality, all of the unclear and contradictory information given to,
 7 and representations made by Defendants, to Plaintiff and the Class members, violated TILA in that it
 8 failed to provide the clear and conspicuous disclosures as required under the Act.

9
 10 **B. Defendants’ Failure to Clearly and Conspicuously Disclose Negative Amortization**
 11 **Violates the Truth in Lending Laws**

12 67. 12 C.F.R. § 226.19 sets forth additional specific disclosure requirements for residential
 13 home loans:

14 **§ 226.19. Certain residential mortgage and variable-rate**
 15 **transactions. . . .**

16 (b) Certain variable-rate transactions. If the annual percentage rate may
 17 increase after consummation in a transaction secured by the consumer's
 18 principal dwelling with a term greater than one year, the following
 19 disclosures must be provided at the time an application form is provided
 20 or before the consumer pays a non-refundable fee, whichever is earlier. . .

21 (vii) *Any rules relating to changes in the index, interest rate, payment*
 22 *amount, and outstanding loan balance including, for example, an*
 23 *explanation of interest rate or payment limitations, negative amortization,*
 24 *and interest rate carryover. (Emphasis added.)*

25 68. These required disclosures must be made in the TILA Disclosure Form with the other
 26 disclosures. The TILA Disclosure Form must state whether the loan *is* a negative amortizing loan and
 27 whether unpaid interest *is* being added to principal.

28 ///

69. In 1995, and continuing each time new Official Staff Commentary was issued, the Federal Reserve Board made clear that when the loan was a variable rate loan and it had payment caps, that the disclosure required a definitive statement about negative amortization:

12 CFR Part 226

[Regulation Z; Docket No. R-0863]

Monday, April 3, 1995

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

“For the program that gives the borrower an option to cap monthly payments, the creditor must fully disclose the rules relating to the payment cap option, including the effects of exercising it (such as **negative amortization occurs** and that the **principal balance will increase**)...” (Found at C.F.R. § 226.19)

70. At all times relevant, statutory and common law in effect make it unlawful for a lender, such as Defendants, to fail to comply the Federal Reserve Board's Official Staff Commentary as well as Regulation Z and TILA.

71. Defendants sold Plaintiff and the Class members an Option ARM loan which has a variable rate feature with payment caps. Defendants failed to include any reference on the TILA Disclosure Form that there was negative amortization. There is nothing that would indicate to anyone that the loan schedule had negative amortization. The payment schedule makes no reference to negative amortization and makes it appear that the payments cover both principal and interest.

72. In fact, the only place where Defendants even inferentially reference negative amortization is in the Note. However, they mention it in such a way as to make a reasonable person believe that negative amortization is only a possibility, rather than a certainty. And, these loans are, in fact, designed in such a manner so as to make negative amortization an absolute certainty.

73. This attempt at a disclosure did not actually serve to alert or inform the borrowers of anything, much less clearly and conspicuously disclose that the payment schedule provided by

1 Defendants absolutely would not pay both principal and interest, and therefore would guarantee that
2 negative amortization was to occur on these loans. Rather, Defendants made it appear that as long as the
3 payment schedule provided by Defendants was followed, there would be no negative amortization.

4 74. So, even where any language is found describing negative amortization, the language is
5 misleading and deceptive. In fact, Defendants' Option ARM loan was designed in such a way as to
6 guarantee negative amortization. TILA demands more than a statement that the payment could be less
7 when Defendants were well aware that the payment is less, and would always be less, than the full
8 interest and principal.

9 **C. Defendants' Failure to Clearly and Conspicuously Disclose that the Initial Interest**
10 **Rate is Discounted Violates Truth in Lending Laws**

11 75. As previously stated, the informed use of credit means being able to make decisions, as
12 well as being able to plan an individual's finances. Every month consumers look at their income and
13 budget where their funds must be paid. The biggest investment in one's life is generally that person's
14 home. In fact, it is often referred to as "the American Dream" to own a home.

15 76. Variable rate loans are based on a "margin" and an "index." The index is often the Prime
16 Rate or the LIBOR exchange rate. The margin is the amount the lender charges over that rate, basically
17 it is the lender's profit on the loan.

18 77. TILA and Regulation Z require disclosures to be clear and conspicuous so people
19 understand what their obligations are. In particular, when the payment is not based on that index and
20 margin a separate disclosure is required. Further, the disclosure must inform the borrower that the
21 payment they are making is not based on what the index and margin really should be in order to avoid
22 negative amortization. The disclosure must also inform that interest rate and payment may go up and
23 clearly and conspicuously provide the circumstances under which the rate and payment will increase.

24 78. The Federal Reserve Board established disclosure requirements for variable rate loans.
25 26 C.F.R. § 226.19 requires a lender to disclose the frequency of interest rate and payment adjustments
26 to borrowers. If interest rate changes will be imposed more frequently or at different intervals than
27 payment changes, a creditor must disclose the frequency and timing of both types of changes.

28 ///

1 79. The disclosures required pursuant to 12 C.F.R. § 226.19 are extremely important because
2 Plaintiff and other consumers similarly situated need this information in order to budget their money.
3 They need to know if their house payments are going to go up so that they can plan for it. If the change
4 comes as a surprise, they face a much greater possibility of defaulting on their loans and losing their
5 homes.

6 80. Defendants, and each of them, state only that the interest rate *may* increase in the future.
7 However, an interest rate increase was in fact far more certain than this disclosure led Plaintiff and the
8 Class members to believe. If Defendants had given the Plaintiff and the Class members the promised
9 low interest rate for any initial period of time, the interest rate was guaranteed to go up even without any
10 change in the index. Thus, the increase in the interest rate on these loans was not just a possibility; it
11 was an absolute certainty and Defendants failed and omitted this material information in their
12 disclosures to Plaintiff and the Class members.

13 81. Defendants disclosure statement provided that the interest rate may increase during the
14 term of this transaction if the index increases. This, however, was not the only circumstance that could
15 cause an increase in the interest rate. The Defendants, and each of them, failed to disclose that the initial
16 interest rate is discounted, creating the possibility of an increase even when the index did not rise. Due
17 to the initial discounted interest rate, the annual interest rate would increase if the index remained
18 constant, or even if the index declined. Because Defendants' disclosure failed to provide this extremely
19 important, material information, Defendants disclosure failed to meet the clear and conspicuous standard
20 mandated under TILA.

21 82. Defendants failed to disclose to Plaintiff and the Class members that their rate was, with
22 100% certainty, going to increase, regardless of whether or not the index upon which their loans are
23 based changed. As such, Defendants violated TILA and Regulation Z with unclear, deceptive and
24 poorly drafted or intentionally misleading disclosure.

25 **D. Defendants' Failure to Disclose the Composite Interest Rate Violates Truth in**
26 **Lending Laws**

27 83. Defendants provided Plaintiff and Class members with multiple, conflicting interest rates
28 when describing the costs of this loan. On the TILA Disclosure Form Defendants set forth one interest

1 rate, while on the Note, Defendants set forth one or two other, different interest rates.

2 84. The official staff commentary to 226 C.F.R. § 17(C)(8) states:

3 *Basis of disclosures in variable-rate transactions.* The disclosures for a
4 variable-rate transaction must be given for the full term of the transaction
5 and must be based on the terms in effect at the time of consummation.
6 Creditors should base the disclosures only on the initial rate and should
7 not assume that this rate will increase. For example, in a loan with an
8 initial rate of 10 percent and a 5 percentage points rate cap, creditors
9 should base the disclosures on the initial rate and should not assume that
10 this rate will increase 5 percentage points. **However, in a variable-rate**
11 **transaction with a seller buydown** that is reflected in the credit contract,
12 **a consumer buydown, or a discounted or premium rate, disclosures**
13 **should not be based solely on the initial terms. In those transactions,**
14 **the disclosed annual percentage rate should be a composite rate based**
15 **on the rate in effect during the initial period and the rate that is the**
16 **basis of the variable-rate feature for the remainder of the term.** (See
17 the commentary to section 226.17(c) for a discussion of buydown,
18 discounted, and premium transactions and the commentary to section
19 226.19(a)(2) for a discussion of the redisclosure in certain residential
20 mortgage transactions with a variable-rate feature.)

21 85. The reason for this requirement is clear. Consumers cannot make informed decisions
22 when they cannot compare the cost of credit to other proposals. It is therefore incumbent upon
23 Defendants to show the composite interest rate in effect so that the borrowers can understand exactly
24 what they are paying for the loan.

25 86. A lender violates TILA, Reg. Z and the OTS guidelines by failing to list the composite
26 rate in variable rate loans that have a discounted initial rate. The loan sold to Plaintiff and Class
27 members by Defendants is a discounted variable-rate loan. Because Defendants failed to properly,
28 clearly and conspicuously, disclose a composite annual percentage rate on these loans Defendants

1 violated TILA and Regulation Z.

2 87. As a direct and proximate result of Defendants' conduct in violation of TILA, Plaintiff
3 and Class members have suffered injury an amount to be determined at time of trial. If Defendants had
4 not violated TILA and had instead properly disclosed the material terms of Defendants' Option ARM
5 loan product, as alleged herein, Plaintiff and Class members would not have entered into the home loan
6 agreements which are the subject of this action. Because Defendants failed to make proper disclosures
7 in violation of TILA, Plaintiff and Class members now seek redress in an amount and/or type as proven
8 at time of trial.

9 88. WHEREFORE, Plaintiff and the Class members are entitled to an order declaring that
10 Defendants violated TILA, 15 U.S.C. §1601, *et seq.*, that Plaintiff and the Class have the right to rescind
11 pursuant to 15 U.S.C. § 1635 and 12 C.F.R. § 226.23, damages pursuant to 15 U.S.C. § 1640, attorneys
12 fees, litigation costs and expenses and costs of suit, and for an order rescinding Plaintiff's individual
13 mortgage and those of any class member desirous of such relief, and for an order awarding other relief
14 as the Court deems just and proper.

16 VII.

17 SECOND CAUSE OF ACTION

18 **Violation of California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et. seq.* -**

19 **"Unlawful" Business Acts or Practices Predicated on Violations of TILA**

20 **(Against All Defendants)**

21 89. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

22 90. Plaintiff brings this cause of action on behalf of herself, on behalf of the Class, and in her
23 capacity as a private attorney general against all Defendants for their unlawful business acts and/or
24 practices pursuant to California Business and Professions Code Sections 17200 *et seq.*, which prohibits
25 all unlawful business acts and/or practices.

26 91. Plaintiff asserts these claims as she is a representative of an aggrieved group and as a
27 private attorney general on behalf of the general public and other persons who have expended funds that
28 the Defendants should be required to pay or reimburse under the equitable and restitutionary remedies

1 provided by California Business and Professions Code Sections 17200 *et seq.*

2 92. The unlawful acts and practices of Defendants alleged above constitute unlawful business
3 acts and/or practices within the meaning of California Business and Professions Code Sections 17200 *et*
4 *seq.*

5 93. By engaging in the above-described acts and practices, Defendants have committed one
6 or more acts of unfair competition within the meaning of Business and Professions Code Sections
7 17200, *et seq.*

8 94. Defendants' unlawful business acts and/or practice as alleged herein have violated
9 numerous laws and/or regulations and said predicate acts are therefore *per se* violations of §17200, *et*
10 *seq.* These predicate unlawful business acts and/or practices include Defendants failure to comply with
11 the disclosure requirements mandated by TILA, 15 U.S.C. §1601, *et seq.*, Regulation Z and Official
12 Staff Commentary issued by the Federal Reserve Board. And, as described in more detail above,
13 Defendants also failed in a number of ways to clearly or accurately disclose the terms of the ARM loan
14 to Plaintiff and the Class members as required under TILA.

15 95. Defendants' misconduct as alleged herein gave Defendants an unfair competitive
16 advantage over their competitors.

17 96. As a direct and proximate result of the aforementioned acts, Defendants, and each of
18 them, received monies and continues to hold the monies expended by Plaintiff and others similarly
19 situated who purchased the ARM loans as described herein.

20 97. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a
21 constructive trust over, and restitution of, the monies collected and realized by Defendants.

22 98. The unlawful acts and practices, as fully described herein, present a continuing threat to
23 members of the public to be mislead and/or deceived by Defendants as described herein. Plaintiff and
24 other members of the general public have no other remedy of law that will prevent Defendants
25 misconduct as alleged herein from occurring and/or reoccurring in the future.

26 99. As a direct and proximate result of Defendants' unlawful conduct alleged herein, Plaintiff
27 and Class Members have lost thousands if not millions of dollars of equity in their homes. Plaintiff and
28 the Class members are direct victims of the Defendants' unlawful conduct, as herein alleged, and each

1 has suffered injury in fact, and have lost money or property as a result of Defendants' unfair
2 competition.

3 100. WHEREFORE, Plaintiff and members of the Classes are entitled to equitable relief,
4 including restitution, restitutionary disgorgement of all profits accruing to Defendants because of their
5 unlawful and deceptive acts and practices, attorneys fees and costs, declaratory relief, and a permanent
6 injunction enjoining Defendants from their unlawful activity.

7
8 **VIII.**

9 **THIRD CAUSE OF ACTION**

10 **(Violation of California's Unfair Competition Law, Bus. & Prof. Code §17200 *et seq.*,**

11 **"Unfair" and "Fraudulent" Business Acts or Practices,**

12 **(Against All Defendants)**

13 101. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

14 102. Plaintiff brings this cause of action on behalf of himself, on behalf of the Class, and in
15 her capacity as a private attorney general against all Defendants for their unfair, fraudulent and/or
16 deceptive business acts and/or practices pursuant to California Business and Professions Code Sections
17 17200 *et seq.*, which prohibits all unfair and/or fraudulent business acts and/or practices.

18 103. Plaintiff asserts these claims as she is a representative of an aggrieved group and as
19 private attorney general on behalf of the general public and other persons who have expended funds that
20 the Defendants should be required to pay or reimburse under the equitable and restitutionary remedies
21 provided by California Business and Professions Code Sections 17200 *et seq.*

22 104. The instant claim is predicated on the generally applicable duty of any contracting party
23 to not misrepresent material facts, and on the duty to refrain from unfair and deceptive business
24 practices. The Plaintiff and the Class members hereby seek to enforce a general proscription of unfair
25 business practices and the requirement to refrain from deceptive conduct. The instant claim is
26 predicated on duties that govern anyone engaged in any business and anyone contracting with anyone
27 else.

28 105. At all times relevant, Defendants engaged in a pattern of deceptive conduct and

1 concealment aimed at maximizing the number of borrowers who would accept their Option ARM loan.
2 Defendants, and each of them, marketed and sold Plaintiff and the Class members a deceptively devised
3 financial product. Defendants marketed and sold their Option ARM loan product to consumers,
4 including Plaintiff, in a false or deceptive manner. Defendants marketed and advertised to the general
5 public through brochures, flyers and other substantially identical marketing material, a loan which
6 appeared to have a very low, fixed interest rate for a period of three (3) to five (5) years and no negative
7 amortization. Further, Defendants disguised from Plaintiff and the Class members the fact that
8 Defendants' Option ARM loan was designed to, and did, cause negative amortization to occur.

9 106. Defendants lured Plaintiff and the Class members into the Option ARM loan with
10 promises of low fixed interest. Once Plaintiff and the Class members entered into these loans,
11 Defendants switched the interest rate charged on the loans to a much higher rate than the one they
12 advertised and promised to Plaintiff and the Class members. After entering these loans, Class members
13 could not escape because Defendants purposefully placed into these loans an extremely onerous
14 prepayment penalty that made it prohibitively expensive for consumers to extricate themselves from
15 these loans. Thus, once on the hook, consumers could not escape from Defendants loans.

16 107. Plaintiff and Class members were consumers who applied for a mortgage loan through
17 Defendants. During the loan application process, in each case, Defendants uniformly promoted,
18 advertised, and informed Plaintiff and Class members that in accepting these loan terms, Plaintiff and
19 Class members would be able to lower their mortgage payment and save money.

20 108. Defendants promoted their Option ARM loan as having a low fixed interest rate, i.e.,
21 typically between 1% and 3%. However, Defendants did not disclose that this was just a "teaser" rate,
22 the purpose of which was to get consumers to enter into loan agreements with Defendants. Defendants
23 did not disclose to Plaintiff and the Class members that the "teaser" rate was not the fixed rate that
24 Defendants would actually charge Plaintiff and the Class members on their outstanding loan balances.

25 109. Based on the Defendants' representations and conduct, Plaintiff and the Class members
26 agreed to finance their primary residence through Defendants' Option ARM loan. Plaintiff and the
27 Class members were told they were being sold a home loan with a low interest rate, fixed for the first
28 three (3) to five (5) years of the loan. Plaintiff and the Class members were also lead to believe that if

1 they made payments based on this advertised interest rate, and the payment schedule provided to them
2 by Defendants, the loan was a no negative amortization home loan. After, the fixed interest period,
3 Plaintiff and the Class members were told their rate “may” change. And, Plaintiff believed they would
4 then be able to re-finance to another home loan. Plaintiff and the Class members believed these facts to
5 be true because that is what the Defendants wanted consumers to believe, that is what Defendants lead
6 consumers to believe.

7 110. Defendants aggressively sold their product as a fixed low interest home loan. Defendants
8 knew that if marketed in such a manner, their Option ARM loan product would be a hugely popular and
9 profitable product for them. Defendants also knew, however, that they were marketing their product in a
10 false and deceptive manner. While Defendants trumpeted their low, fixed rate loans to the public,
11 Defendants knew, however, that this was not entirely true.

12 111. In fact, Defendants’ Option ARM loan possessed a low, fixed *payment* but not a low,
13 fixed interest rate. Unbeknownst to Plaintiff and Class members, the actual interest rate they were
14 charged on their loans was not fixed. After purchasing Defendants’ Option ARM loan product, Plaintiff
15 and class members never actually received the benefit of the low advertised interest rate, or, in some
16 cases, consumers received the low rate for just a single month. Immediately, thereafter, Defendants in
17 every instance and for every loan increased the interest rate they charged Plaintiff and the Class
18 members. Once Plaintiff and Class members accepted Defendants’ Option ARM loan, they had no
19 viable option to extricate themselves because of these loan agreements included a draconian pre-
20 payment penalty.

21 112. Defendants perpetrated a bait and switch scheme on Plaintiff and Class members.
22 Defendants’ conduct and failure to disclose the whole truth about the loan’s interest rate and to describe
23 the loan as having a fixed interest rate was deceptive and unfair. Defendants initiated this scheme in
24 order to maximize the amount of the loans issued to consumers and to maximize Defendants’ profits.

25 113. The acts, misrepresentations, omissions, and practices of Defendants alleged above
26 constitute unfair, and/or fraudulent business acts and/or practices within the meaning of California
27 Business and Professions Code Sections 17200 et seq.

28 114. By engaging in the above-described acts and practices, Defendants have

1 committed one or more acts of unfair competition within the meaning of Business and Professions Code
2 Sections 17200, et seq.

3 115. Defendants' conduct, as fully described above, was likely to deceive members of the
4 consuming public, and at all times, Defendants' failures to disclose and omission of material facts have
5 been and continue to be unfair, fraudulent, untrue and/or deceptive.

6 116. Defendants' misconduct as alleged herein gave Defendants an unfair competitive
7 advantage over their competitors.

8 117. As a direct and proximate result of the aforementioned acts, Defendants, and each of
9 them, received monies and continues to hold the monies expended by Plaintiff and others similarly
10 situated who purchased the ARM loans as described herein.

11 118. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a
12 constructive trust over, and restitution of, the monies collected and realized by Defendants.

13 119. The harm to Plaintiff, members of the general public and others similarly situated
14 outweighs the utility of Defendants' policies, acts and/or practices and, consequently Defendants'
15 conduct herein constitutes an unlawful business act or practice within the meaning of California
16 Business & Professions Code Sections 17200 et seq.

17 120. The unfair, deceptive and/or fraudulent business practices of Defendants, as fully
18 described herein, present a continuing threat to members of the public to be mislead and/or deceived by
19 Defendants ARM loans as described herein. Plaintiff and other members of the general public have no
20 other remedy of law that will prevent Defendants misconduct as alleged herein from occurring and/or
21 reoccurring in the future.

22 121. As a direct and proximate result of Defendants' unfair and/or fraudulent conduct alleged
23 herein, Plaintiff and Class Members have lost thousands if not millions of dollars of equity in their
24 homes. Plaintiff and Class members are direct victims of the Defendants' unlawful conduct, and each
25 has suffered injury in fact, and have lost money or property as a result of Defendants' unfair
26 competition.

27 122. WHEREFORE, Plaintiff and members of the Classes are entitled to equitable relief,
28 including restitution, restitutionary disgorgement of all profits accruing to Defendants because of their

unfair, fraudulent, and deceptive acts and/or practices, attorneys fees and costs, declaratory relief, and a permanent injunction enjoining Defendants from their unfair, fraudulent and deceitful activity.

IX.

FOURTH CAUSE OF ACTION

Breach of Contract

(Against All Defendants)

123. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

124. Plaintiff and Class members entered into a written home loan agreement – the contract or Note – with Defendants. The Note was drafted by Defendants and could not be modified by Plaintiff or Class members. The Note describes terms and respective obligations applicable to the parties herein.

125. The Note describes Plaintiff's and Class members' interest rate on the loan as a low interest rate, typically between 1% and 3%. In addition, as required by federal law, the Defendants provided a Truth In Lending Disclosure concerning the home loan agreement that shows a payment schedule based on that low 1% to 3% interest rate. For the first three (3) to five (5) years the payment schedule shows that Plaintiff's and Class members' monthly payment obligations to Defendants are the exact payments necessary to pay off all principal and interest during the terms of the loans if, indeed, the interest rate actually charged by Defendants on the loans was the low interest rate promised.

126. Defendants drafted the Note and did not allow Plaintiff or the Class members any opportunity to make changes to the Note and due to Defendants superior bargaining position, the Note was offered on a take it or leave it basis. As such, the Notes at issue are contracts of adhesion.

127. Defendants expressly and/or through their conduct and actions agreed that Plaintiff's and the Class members' monthly payment obligations would be sufficient to pay both the principal and interest owed on the loans. Defendants breached this agreement and never applied any of Plaintiff's and the Class members' payments to principal.

128. The written payment schedules prepared by Defendants, and applicable to Plaintiff's and Class members' loans, show that the payment amounts owed by Plaintiff and Class members to Defendants in year one are exactly equal to the amount required to pay off the loan if, indeed, the

1 interest actually charged on the loan was the low interest rate promised. If the Defendants did as
2 promised, the payments would have been sufficient to pay both principal and interest amounts.

3 129. Instead, Defendants immediately raised Plaintiff's and Class members' interest rates and
4 applied ***no part*** of Plaintiff's and Class members' payments were applied to the principal balances on
5 their loans. In fact, because Defendants charged more interest than was agreed to and payments, as
6 disclosed by Defendants, were, at all times relevant, insufficient to cover the interest charge and thus
7 principal balances increased (which is the negative amortization built into the loan).

8 130. Defendants breached the written contractual agreement by failing to apply any portion of
9 Plaintiff's and the Class members' monthly payments towards their principal loan balances.

10 131. Plaintiff and the Class members, on the other hand, did all of those things the contract
11 required of them. Plaintiff and the Class members made monthly payments in the amount required by
12 the terms of the Note and reflected in the payment schedule prepared by Defendants.

13 132. As a result of Defendants' breach of the agreement, Plaintiff and the Class members have
14 suffered harm. Plaintiff and Class members have incurred additional charges to their principal loan
15 balance. Plaintiff and Class members have incurred and will continue to incur additional interest
16 charges on the principal loan balance and surplus interest added to Plaintiff's and Class members'
17 principal loan balance. Furthermore, Defendants' breach has placed Plaintiff and Class members in
18 danger of losing their homes through foreclosure, as Defendants have caused Plaintiff's and Class
19 members' principal loan balances to increase and limited these consumers' ability to make their future
20 house payments or obtain alternative home loan financing.

21 133. At all times relevant, there existed a gross inequality of bargaining power between the
22 parties to the ARM loan contracts. At all times relevant, Defendants unreasonably and unconscionably
23 exploited their superior bargaining position and foisted upon Plaintiff and the Class members extremely
24 harsh, one-sided provisions in the contract, which Plaintiff and Class members were not made aware of
25 and did not comprehend (*e.g.*, Defendants fraud and failures to clearly and conspicuously disclose as
26 alleged herein), and which attempt to severely limit Defendants obligations under the contracts at the
27 expense of Plaintiff and Class members, as alleged herein. As a result of these extremely harsh, one-
28 sided provisions, including but not limited to the provisions which seek to limit the "teaser" interest rate

1 for one month or less, these provisions are unconscionable and therefore unenforceable.

2 134. WHEREFORE, Plaintiff and members of the Classes are entitled to declaratory relief,
3 compensatory damages proximately caused by Defendants breach of contract as alleged herein, pre-
4 judgment interest, costs of suit and other relief as the Court deems just and proper.

5
6 **X.**

7 **FIFTH CAUSE OF ACTION**

8 **Breach of Implied Covenant of Good Faith and Fair Dealing**

9 **(Against All Defendants)**

10 135. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

11 136. Defendants entered into written agreements with Plaintiff and Class members based on
12 representations Defendants made directly and indirectly to Plaintiff and the Class members about the
13 terms of their loans.

14 137. Defendants expressly and impliedly represented to Plaintiff and the Class members that
15 they would provide loans secured by Plaintiff's and Class members' homes, and that the loans would
16 have a fixed interest rate at promised low interest rate for a period of three (3) to five (5) years.

17 138. Defendants also represented that if Plaintiff and the Class members made the monthly
18 payments in the amount prescribed by Defendants that no negative amortization would occur. The Note
19 expressly states and/or implies that Plaintiff's and Class members' monthly payment obligation **will** be
20 applied to pay both principal and interest owed on the loan. The Note further states that for each
21 monthly payment Plaintiff and the Class members interest shall be paid before principal.

22 139. The written payment schedules prepared by Defendants, and applicable to Plaintiff's and
23 Class members' loans, show that the payment amounts owed by Plaintiff and Class members to
24 Defendants in year one are exactly equal to the amount required to pay off the loan if, indeed, the
25 interest actually charged on the loan was the low interest rate promised. If the Defendants acted as it
26 promised, the payments would have been sufficient to pay both principal and interest.

27 140. Instead, Defendants immediately raised Plaintiff's and Class members' interest rate and
28 applied **no part** of Plaintiff's and Class members' payment to principal. In fact, because Defendants

1 charged more interest than was disclosed and agreed to in the loans, Plaintiff and the Class members'
2 payments were insufficient to cover the interest that Defendants charged resulting in an increase in the
3 amount of principal Plaintiff and the Class members owed on their homes.

4 141. Defendants unfairly interfered with Plaintiff's and Class members' rights to receive the
5 benefits of the contract. These loans will cost Plaintiff and Class members thousands of dollars more
6 than represented by Defendants. Plaintiff and Class members did not receive the fixed low interest rate
7 home loan promised them by Defendants. Defendants have caused Plaintiff and Class members to lose
8 equity in their homes and therefore have denied Plaintiff and Class members the enjoyment, security of
9 one of their most important investments.

10 142. Plaintiff and Class members, on the other hand, did all of those things the contract
11 required of them. Plaintiff and Class members made monthly payments in the amount required by the
12 terms of the Note and reflected in the payment schedule prepared by Defendants.

13 143. At all times relevant, Defendants unreasonably denied Plaintiff and members of the Class
14 the benefits promised to them under the terms of the Note, including but not limited to a low interest rate
15 for the first three (3) to five (5) years of the loan, and clear and conspicuous disclosure of a payment
16 amount sufficient to pay both principle and interest so as to avoid negative amortization and the other
17 failures to comply with the disclosure requirements mandated by TILA, 15 U.S.C. §1601, et seq.,
18 Regulation Z and Official Staff Commentary issued by the Federal Reserve Board as alleged herein

19 144. Knowing the truth and motivated by profit and market share, Defendants have knowingly
20 and willfully breached the implied covenant of good faith and fair dealing by engaged in the acts and/or
21 omissions to mislead and/or deceive Plaintiff and others similarly situated as alleged herein.

22 145. Defendants breaches, as alleged herein were committed with willful and wanton
23 disregard for whether or not Plaintiff or others similarly situated would actually receive a home loan that
24 would provide the promised low interest and payment rate for the first three (3) to five (5) years of the
25 loan sufficient to pay both principle and interest.

26 146. Upon information and belief and at all times relevant, Defendants possessed full
27 knowledge and information concerning the above facts about the ARM loans, and otherwise sold these
28 ARM loans throughout the United States, including the State of California.

147. Defendants' placing of their corporate and/or individual profits over the rights of others is particularly vile, base, contemptible, and wretched and said acts and/or omissions were performed on the part of officers, directors, and/or managing agents of each corporate defendant and/or taken with the advance knowledge of the officers, directors, and/or managing agents who authorized and/or ratified said acts and/or omissions. Defendants thereby acted with malice and complete indifference to and/or conscious disregard for the rights and safety of others, including Plaintiff and the General Public.

148. At all times relevant, Defendants' conduct, as alleged herein, was malicious, oppressive, and/or fraudulent.

149. As a result of Defendants' conduct, Plaintiff and Class members have suffered harm. Plaintiff and the Class members have incurred additional charges to their principal loan balance. Plaintiff and Class members have incurred and will continue to incur additional interest charges on the principal loan balance and surplus interest added to Plaintiff's and Class members' principal loan balance. Furthermore, Defendants' breach has caused and/or otherwise placed Plaintiff and the Class members in danger of losing their homes through foreclosure and, as a direct and proximate result of said misconduct, caused Plaintiff's and the Class members' principal loan balances to increase limiting these consumers' ability to make their future house payments or obtain alternative home loan financing.

150. WHEREFORE, Plaintiff and members of the Classes are entitled to declaratory relief, all damages proximately caused by Defendants breach of the implied covenant of good faith and fair dealing as alleged herein, punitive damages, pre-judgment interest, costs of suit and other relief as the Court deems just and proper.

XI.

SIXTH CAUSE OF ACTION

**Violation of California’s Unfair Competition Law, Bus. & Prof. Code §17200, *et seq.*, –
“Unlawful” Business Acts or Practices Predicated on Violations of Cal. Financial Code § 22302
(Against All Defendants)**

151. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

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1 152. Plaintiff brings this cause of action on behalf of herself, on behalf of the Class, and in her
2 capacity as a private attorney general against all Defendants for their unlawful business acts and/or
3 practices pursuant to California Business and Professions Code Sections 17200 *et seq.*, which prohibits
4 all unlawful business acts and/or practices.

5 153. Plaintiff asserts these claims as she is a representative of an aggrieved group and as a
6 private attorney general on behalf of the general public and other persons who have expended funds that
7 the Defendants should be required to pay or reimburse under the equitable and restitutionary remedies
8 provided by California Business and Professions Code Sections 17200 *et seq.*

9 154. The unlawful acts and practices of Defendants alleged above constitute unlawful business
10 acts and/or practices within the meaning of California Business and Professions Code Sections 17200 *et*
11 *seq.*

12 155. By engaging in the above-described acts and practices, Defendants have committed one
13 or more acts of unfair competition within the meaning of Business and Professions Code Sections
14 17200, *et seq.*

15 156. Defendants' unlawful business acts and/or practice as alleged herein have violated
16 numerous laws and/or regulations and said predicate acts are therefore *per se* violations of §17200, *et*
17 *seq.* These predicate unlawful business acts and/or practices include Defendants violation of California
18 Financial Code § 22302.

19 157. California Financial Code § 22302 applies to consumer loan contracts. It states that a
20 loan found to be unconscionable pursuant to Section 1670.5 of the California Civil Code shall be
21 deemed to be a violation of Financial Code § 22302.

22 158. The loan contracts prepared by Defendants and entered into between Plaintiff and Class
23 members and Defendants were, and are, unconscionable pursuant to Section 1670.5 of the Civil Code.

24 159. The relative bargaining power between Plaintiff and Class members and Defendants was
25 unequal. Plaintiff and Class members could not negotiate or change any of the particular terms related
26 to the loan and drafted by Defendants. To secure the loan Plaintiff and Class members were given no
27 choice but to make payments as described in the payment schedule and to accept and sign all the
28 associating documents numbering over a hundred pages.

1 160. The period of time where Defendants offered Plaintiff and Class members a low interest
2 rate, often was for only one month. Because Defendants packaged the loan contracts in such a manner
3 as to lead Plaintiff and Class members to believe that they had a low interest rate and therefore low
4 payments for three to five years, Plaintiff and Class members would end up owing significantly more
5 principle on their homes than before they entered the contracts and with a significant chance of losing
6 their homes through foreclosure.

7 161. Defendants drafted the subject ARM loan contracts for use on tens of thousands of
8 individuals. The loan process was such that individual terms of the contract could not be modified. The
9 standardized loan contracts were delivered to Plaintiff and Class members at the time of signature. The
10 loan process offered by Defendants did not permit for any meaningful negotiation of terms or even
11 review of the loan documents at the time of execution.

12 162. Defendants further inserted into the subject ARM loan contracts a draconian prepayment
13 penalty that has as its sole purpose to cause Plaintiff and Class members to continue under the terms of
14 their loans or lose thousands of dollars if Plaintiff try to refinance the loans.

15 163. The standardized loan contracts drafted by Defendants were so harsh and one-sided that
16 they could only lead Plaintiff and Class members to one result, a significant loss of money. As a result
17 of Defendants' unreasonable and unconscionable conduct, as alleged herein, Plaintiff and the Class
18 members have suffered direct and actual injury.

19 164. Because Defendants' Option ARM loan contract is unconscionable pursuant to Section
20 1670.5 of the Civil Code, Defendants' Option ARM loan violates Financial Code § 22302 and
21 constitutes a violation of the UCL.

22 165. As a direct and proximate result of the aforementioned acts, Defendants, and each of
23 them, received monies and continues to hold the monies expended by Plaintiff and others similarly
24 situated who purchased the ARM loans as described herein.

25 166. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a
26 constructive trust over, and restitution of, the monies collected and realized by Defendants.

27 167. The unlawful acts and practices, as fully described herein, present a continuing threat to
28 members of the public to be misled and/or deceived by Defendants as described herein. Plaintiff and

1 other members of the general public have no other remedy of law that will prevent Defendants
2 misconduct as alleged herein from occurring and/or reoccurring in the future.

3 168. As a direct and proximate result of Defendants' unlawful conduct alleged herein, Plaintiff
4 and Class Members have lost thousands if not millions of dollars of equity in their homes. Plaintiff and
5 Class members are direct victims of the Defendants' unlawful conduct, as herein alleged, and each has
6 suffered injury in fact, and have lost money or property as a result of Defendants' unfair competition.

7 169. WHEREFORE, Plaintiff and members of the Classes are entitled to equitable relief,
8 including restitution, restitutionary disgorgement of all profits accruing to Defendants because of their
9 unlawful, unfair and fraudulent, and deceptive practices, attorneys fees and costs, declaratory relief, and
10 a permanent injunction enjoining Defendants from their unlawful activity.

11 **PRAYER FOR RELIEF**

12
13 WHEREFORE, Plaintiff and all Class members pray for judgment against each Defendant,
14 jointly and severally, as follows:

- 15 A. An order certifying this case as a class action and appointing Plaintiff and their counsel to
- 16 represent the Class;
- 17 B. For actual damages according to proof;
- 18 C. For compensatory damages as permitted by law;
- 19 D. For consequential damages as permitted by law;
- 20 E. For statutory damages as permitted by law;
- 21 F. For punitive damages as permitted by law;
- 22 G. For rescission;
- 23 H. For equitable relief, including restitution;
- 24 I. For restitutionary disgorgement of all profits Defendants obtained as a result of their
- 25 unfair competition;
- 26 J. For interest as permitted by law;
- 27 K. For Declaratory Relief;
- 28 L. For a mandatory injunction requiring Defendants to permanently include in every Option

ARM loan and disclosure statement: (i) clear and conspicuous disclosure of the actual interest rate on the Note(s) and disclosure statement(s) as required under 12 C.F.R. § 226.17 by; (ii) clear and conspicuous disclosure in the Note(s) and the disclosure statement(s) that payments on the variable interest rate loan during the initial period at the teaser rate will result in negative amortization and that the principal balance will increase as required under 12 C.F.R. § 226.19; and (iii) clear and conspicuous disclosure that the initial interest rate provided is discounted and does not reflect the actual interest that Plaintiff and Class members would be paying on the Note(s).

M. For reasonable attorneys' fees and costs; and

N. For such other relief as is just and proper.

DATED: October 11, 2007

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Attorneys for Plaintiff and all others Similarly
Situated

///

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury to the full extent permitted by law.

DATED: October 11, 2007

SPIRO MOSS BARNES LLP

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Attorneys for Plaintiff and all others Similarly
Situated

Exhibit No. 1

SEE "PREPAYMENT PENALTY ADDENDUM TO NOTE" ATTACHED HERETO AND MADE A PART HEREOF.

LOAN NO.: 07512004

ADJUSTABLE RATE NOTE
(MTA - Twelve Month Average Index - Payment Caps)

MIN: 100109800000246596
MERS Phone: 1-888-679-6377

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

JANUARY 05, 2006
[Date]

CAMPBELL
[City]

CALIFORNIA
[State]

2867 BRAHMS AVE, SAN JOSE, CA 95122-
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 472,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. The Principal amount may increase as provided under the terms of this Note but will never exceed ONE HUNDRED FIFTEEN AND 000/1000THS percent (115.000 %) of the Principal amount I originally borrowed. This is called the "Maximum Limit." Lender is PLAZA HOME MORTGAGE, INC.

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST**(A) Interest Rate**

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.500 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the 1st day of MARCH, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE AND 400/1000THS percentage point(s) (3.400 %) ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

PayOption ARM Note - MTA Index - Multistate
FE-5312 (0412)

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10/04
LENDER SUPPORT SYSTEMS INC. FE5312XX.COU (01/05)

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3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the _____ day of each month beginning on _____ MARCH, 2006 .

I will make these payments every month until I have paid all the Principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on _____ FEBRUARY 01, 2036 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at _____ PLAZA HOME MORTGAGE, INC.
5090 SHOREHAM PLACE #109, SAN DIEGO, CA 92122
or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 1,628.97 unless adjusted under Section 3 (F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the first day of _____ MARCH, 2007 , and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount the Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and Interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3 (D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to _____ ONE HUNDRED FIFTEEN AND 000/1000THS percent (15.000 %) of the Principal amount I originally borrowed. My unpaid principal could exceed that Maximum Limit due to

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Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options:

(i) Interest Only Payment: the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) Fully Amortized Payment: the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.

(iii) 15 Year Amortized Payment: the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of Principal and Interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option

shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

ENBDA AMPARAN _____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

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FEDER/ RUTH - IN - LENDING DISCLOSURE STATEMENT
(T) d NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

Creditor:
PLAZA HOME MORTGAGE, INC.

Borrower:
ENBDA AMPARAN

875 NORTH FIRST ST. #900
SAN JOSE, CA 95112

2687 BRAHMS AVENUE
SAN JOSE, CA 95122
Loan Number: 07512004

Date: JANUARY 05, 2006

Check box if applicable:

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. 7.136 %	FINANCE CHARGE The dollar amount the credit will cost you. \$ 778,880.00	Amount Financed The amount of credit provided to you or on your behalf. \$ 462,476.28	Total of Payments The amount you will have paid after you have made all payments as scheduled. \$ 1,241,456.28	<input type="checkbox"/> Total Sale Price The total cost of your purchase on credit including your down-payment of \$ N/A \$ N/A
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☐ **REQUIRED DEPOSIT:** The annual percentage rate does not take into account your required deposit.

PAYMENTS: Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due	Number of Payments	Amount of Payments	When Payments Are Due	Number of Payments	Amount of Payments	When Payments Are Due
Monthly Beginning:			Monthly Beginning:			Monthly Beginning:		
12	1,628.97	03/01/2006						
12	1,751.14	03/01/2007						
12	1,882.48	03/01/2008						
12	2,023.66	03/01/2009						
12	2,175.44	03/01/2010						
300	3,759.72	03/01/2011						

THE PAYMENT SCHEDULE AND ANNUAL PERCENTAGE RATE DISCLOSED HERE ARE ESTIMATED ASSUMING THAT THE CURRENT INDEX RATE WILL NOT INCREASE NOR DECREASE THROUGHOUT THE LOAN TERM.

☐ **DEMAND FEATURE:** This obligation has a demand feature.

☒ **VARIABLE RATE:** Your loan contains variable rate features.

☐ Information regarding the variable rate features of your loan have been provided to you earlier in a separate document.

☒ Information regarding the variable rate features of your loan are provided hereinafter. The annual percentage rate may increase or decrease during the term of this transaction with increases or decreases in the value of the "Index" (or "Reference Rate"). The rate that you will pay may not be changed more often than every ONE MONTH commencing 03/01/2006.

☐ **Rate Change Limits:** The rate may not be changed by more than _____ % on any one Rate Change Date.

☒ The rate will never be greater than 9.950 %.

☐ Any increase in the rate will result in a corresponding increase in the payment.

☒ Rate increases may occur without immediate and/or corresponding payment increases.

☒ Unpaid interest will be added to the principal.

The "Index" (or "Reference Rate") is the:
THE TWELVE MONTH AVERAGE OF THE MONTHLY YIELDS ON UNITED STATES TREASURY SECURITIES, ADJUSTED TO A CONSTANT MATURITY OF ONE YEAR, AS MADE AVAILABLE BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

INSURANCE: The following insurance is required to obtain credit:

☐ Credit life insurance and credit disability ☒ Property insurance ☐ Flood insurance

You may obtain the insurance from anyone you want that is acceptable to creditor.

☐ If you purchase ☐ property ☐ flood insurance from creditor you will pay \$ _____ for one year term.

SECURITY: You are giving a security interest in:
2687 BRAHMS AVE, SAN JOSE, CA 95122-

☐ The goods or property being purchased ☒ Real property you already own.

FINING FEES: \$ 85.00

LATE CHARGE: If a payment is more than 15 days late, you will be charged 5.00 % of the Principal & Interest payment.

PREPAYMENT: If you pay off early, you

☒ may ☐ will not have to pay a penalty.

☐ may ☒ will not be entitled to a refund of part of the finance charge.

ASSUMPTION: Someone buying your property

☐ may ☐ may, subject to conditions ☒ may not assume the remainder of your loan on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties.

☐ e means an estimate ☐ all dates and numerical disclosures except the late payment disclosures are estimates.

The undersigned acknowledge receiving and reading a completed copy of this disclosure.
Neither you nor the creditor previously has become obligated to make or accept this loan, nor is any such obligation made by the delivery or signing of this disclosure.

☒ I/We have received the Variable Rate Disclosure for the loan program for which I/We have applied.

ENBDA AMPARAN

Date

Date

Date

Date

LENDER SUPPORT SYSTEMS, INC. GEN-001.GEN (07/04)

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